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DeSoto Broadcasting, Inc.
2065 Cantu Court
Sarasota, FL 34232

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January 19, 1996

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

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Re: CS Docket No. 95-178

Dear Mr. Caton:

Enclosed are an original and four (4) copies of the Comments of DeSoto Broadcasting, Inc. in response to the Notice of Proposed Rule Making in the above-referenced proceeding.

Should you have any questions, please contact me directly.

Sincerely,

Danford L. Sawyer (WF)

Danford L. Sawyer, Jr.
President
DeSoto Broadcasting, Inc.

Enclosures

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JAN 19 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Definition of Markets for the Purposes of the
Cable Television Mandatory Television
Broadcast Signal Carriage Rules

CS Docket No. 95-178

TO: The Commission

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COMMENTS OF DESOTO BROADCASTING, INC.

DeSoto Broadcasting, Inc., licensee of Television Station WBSV-TV, Channel 62, Venice, Florida ("DeSoto"), hereby submits its Comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM").

1. Section 614(h)(1)(c) of the Communications Act of 1934 ("the Act"), as amended, specifies that a station's market for must-carry purposes shall be determined in the manner provided by Section 73.3555(d)(3)(i) of the Rules of the Commission as in effect on May 1, 1991. That rule section, now redesignated as 73.3555(e)(3)(i), refers to Arbitron Rating Company's Area of Dominant Influence ("ADI"). As the NPRM notes at ¶ 6, since the enactment of Section 614 of the Act and various rules implementing it, Arbitron has ceased its designation and publication of ADI market areas. The industry standard for designation of market areas is now the A.C. Nielsen Company's Designated Market Areas ("DMA").

2. The Commission recognizes that its rules need to be amended to establish a new standard for defining market areas and seeks comment on three proposals set forth in the NPRM:

- Substitute DMAs for ADIs.
- Continue to use the last Arbitron Television Market Guide, published in 1991, as the

standard.

- Retain the existing market definition for the 1996 must-carry/retransmission consent election and convert to the Nielsen DMAs thereafter.

3. As a threshold matter, the Commission must resolve whether changing from the ADI standard to the DMA standard would be consistent with Section 614(h)(1)(C) of the Act as recognized in ¶7 of the NPRM. Section 73.3555(e)(3)(i) of the Rules states:

(3) For purposes of this paragraph:

(i) National audience reach means the total number of television households in the Arbitron Area of Dominant Influence (ADI) markets in which the relevant stations are located divided by the total national television households as measured by ADI data at the time of a grant, transfer or assignment of a license. For purposes of making this calculation, UHF television stations shall be attributed with 50 percent of the television households in their ADI market. Where the relevant application forms require a showing with respect to audience reach and the application relates to an area where Arbitron ADI market data are unavailable, then the applicant shall make a showing as to the number of television households in its market. Upon such a showing, the Commission shall make a determination as to the appropriate audience reach to be attributed to the applicant.

4. The Commission is without authority to change the Act, which specifically refers to redesignated Section 73.3555(e)(3)(i) *as in effect on May 1, 1991*. Thus, to change the rule would not solve the problem addressed in the NPRM. The rule does reference situations in which Arbitron ADI market data are unavailable and permits an applicant to make an alternate showing of the number of television households in the market. Current Arbitron data are unavailable and will never be available unless Arbitron determines to re-enter the television ratings market. The Commission, therefore, could issue an *Order* in response to the instant rule making proceeding stating that it will accept DMA data as an alternate showing under the rule. This, in addition to ensuring continued

adherence to the statute, would have the effect of (1) providing a uniform standard¹; (2) permitting must-carry/retransmission consent elections and market modifications to be made on the basis of current data; and (3) avoiding administrative chaos that would ensue from the Commission adhering to a market definition standard that is no longer in use in the industry.

5. The legislative history of the Cable Television Consumer Protection and Competition Act of 1992 is silent as to the intent of Congress in specifying the May 1, 1991 version of redesignated Section 73.3555(e)(3)(i) of the Rules of the Commission as the standard for determining television markets, but there can be no mistake as to the *present* intent of Congress. The Conference Committee proposal for revision of the Communications Act of 1934 states:

Section 614(h)(1)(C) (47 U.S.C. 534(h)(1)(C)) is amended--

(A) by striking "in the manner provided in section 73.3555(d)(3)(i) of title 47, Code of Federal Regulations, as in effect on May 1, 1991." in clause (i) and inserting "by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns."

Congress, in its proposed revision of the Communications Act, has recognized the problem suggested in the instant NPRM and has endorsed the proposal DeSoto supports -- making an immediate switch from the ADI standard to the DMA standard.

6. Of the three proposals set forth in the NPRM, the last merely postpones the inevitable change to the DMA standard. There is no reason for continuing to use the ADI standard for the 1996 election if the DMA standard is to be ultimately adopted in any event. Stations have had five years of experience with the DMA standard and will, therefore, have no difficulty using it in making their

¹ Arbitron data are not available in any event for Alaska. NPRM at n. 8.

must-carry/retransmission consent election in 1996. Indeed, use of the obsolete ADI standard would require stations to refer to data they no longer use and may no longer be readily available to them.

7. For these reasons, the second option (retaining the ADI standard without change) is also unavailing. The NPRM at ¶ 7 proposes this option as the Commission's tentative conclusion. The NPRM suggests, that this option would bring "stability" to the process. This seeming advantage is also the single most compelling disadvantage of the proposal. The television marketplace is dynamic, not stable. Anchoring must-carry to data that are now already five years old and will only become less reliable as time goes on will hobble the television signal carriage process. As viewer patterns change in response to shifting populations, modifications of stations' facilities and cable carriage, the Commission will be faced with more rather than fewer requests for market modifications. Moreover, relying on increasingly obsolete data will only serve to cause confusion for stations more accustomed to dealing with DMAs -- now the industry standard. Thus, although there might be some short-term burden on the Commission's resources by virtue of shifting to the DMA standard, the long-term effect will be a lessening of the burden as fewer stations and cable systems will seek market modifications..

8. The fact that there may not be any "systematic improvement in market definitions" resulting from the switch from ADIs to DMAs, as suggested in ¶ 7 of the NPRM, ignores the reality that there can only be a continued degradation in the reliability of the data as time goes on. The statistical difference between ADIs and DMAs at present is minimal. The difference, however, will become significant in succeeding years. The Commission should not miss an opportunity to harmonize

its rules with industry practice as it did when it adopted the ADI standard in conformance with what was then the industry standard.²

9. The NPRM asks at ¶ 7 what effect the change from the ADI to the DMA standard would have on cases already processed under Section 614(h) of the Act. The Commission is likely to find that there will be no effect at all. Stations and cable systems that sought market modifications pursuant to Section 614(h) did so not on the basis of whether the ADI or DMA standard was applicable. Rather they sought to add or delete communities based on viewership patterns.

10. This is precisely the standard that Nielsen uses to establish DMAs. Each year Nielsen reviews viewership patterns in each of the approximately 3200 counties for which it collects data. It then applies an objective standard, based on a complex algorithm, to determine whether a county should move from one DMA to another. Only 30 to 40 counties, about one percent, are moved in any given year. The principal reason for moving a county is that a station has changed its facilities or a cable system has added or deleted a station, thus affecting viewership in a particular county.

11. At present, the DMAs and ADIs are approximately the same. The NPRM at ¶ 6 points out two communities -- Hagerstown, MD and Sarasota, FL -- where the DMA and ADI designations are different. Arbitron considered Sarasota as a separate ADI (incorporating Venice, FL, WBSV's community of license), while Nielsen includes Venice as part of the larger Tampa-St. Petersburg-Sarasota DMA, the 15th market. .

² The NPRM at n.3 points out that the market definitions also have copyright implications. This should not present an obstacle to changing to the DMA standard as it would be a relatively simple matter to modify Sections 76.55(e) and 76.59 of the Rules of the Commission via a similar NPRM. Since Arbitron no longer publishes its Television ADI Market Guide, Nielsen's U.S. Television Household Estimates for the current year could be construed as a "successor publication" as set forth in Section 76.55(e).

12. WBSV-TV is a UHF independent, which has been on the air only since 1991. It competes against larger, more powerful, VHF stations and network affiliates in the Tampa-St. Petersburg-Sarasota DMA for audience and advertisers. WBSV-TV has suffered significant losses over the years. Current projections are that the station will continue to show losses. Without some relief, there is the real chance WBSV-TV will go off the air, thus depriving the community of an additional voice. Simply put, there is little hope that the station will ever achieve profitability unless it is included in the Tampa-St. Petersburg-Sarasota DMA.

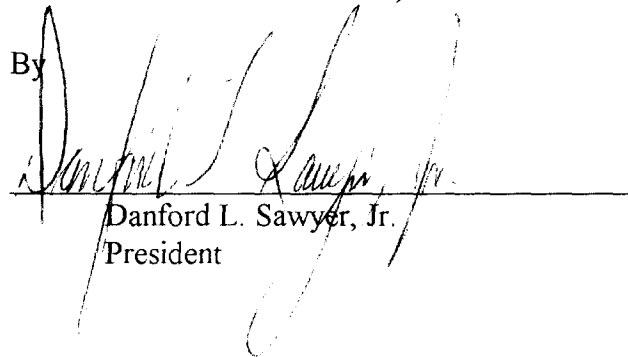
13. Including WBSV-TV in this larger market, where it would have must-carry rights for the first time, would level the playing field for WBSV-TV. Thus, while the Commission must make its ultimate decision based on global considerations, it cannot ignore the effect of its action on individual stations such as WBSV-TV. Absent a showing that any stations could be adversely affected by moving to the standard the industry itself has adopted, the Commission should consider the public interest benefits that would accrue by making WBSV-TV a more viable competitor in its market.

For the forgoing reasons, DeSoto Broadcasting, Inc. respectfully suggests that the Commission adopt the first option set forth in the NPRM and substitute the Nielsen DMA for Arbitron's ADI effective with the June 1, 1996 must-carry/retransmission consent election.

Respectfully Submitted,

DESOTO BROADCASTING, INC.

By



A handwritten signature in dark ink, appearing to read "Danford L. Sawyer, Jr.", is written over a horizontal line. The signature is stylized and cursive.

Danford L. Sawyer, Jr.
President

January 19, 1996

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